

ISSUE DATE: February 9, 1999

DOCKET NO. P-5096/TC-98-953

ORDER APPROVING TARIFF REVISIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Introduction of Several
New Service Options by Qwest
Communications Corporation

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PROCEDURAL HISTORY

On June 26, 1998, Qwest Communications Corporation (Qwest or the Company) filed amendments to its tariff to introduce several new product offerings including the Collector Card Program and Campus Talk Options X, 1,2,3, and 4.

On November 2, 1998, the Minnesota Department of Public Service (the Department) filed comments. The Department recommended that the Commission approve all Sprint's proposed tariff revisions except the Collector Card Program and Campus Talk Options X, 1,2,3, and 4.

At its December 15, 1998 telecommunications meeting, the Commission decided to defer a decision on the matter and invite the Company to have a representative at the Commission's January 19, 1999 meeting to discuss the issues.

The Commission met on January 19, 1998 to further consider this matter. Two representatives of the Company appeared at the meeting via the Commission's public access telecommunications line.

FINDINGS AND CONCLUSIONS

I. Collector Card Program

A. The Company's Proposal

Qwest's general prepaid card arrangement is as follows: Qwest sells prepaid cards to retailers at wholesale rates. The retailer then sells the card to customers (end-users) who purchase the card at the retail rate, which is a tariffed usage rate. In these circumstances, the retailer's profit comes from the difference between the wholesale rates and the tariffed usage (retail) rate.

Under Qwest's Prepaid Collector Card Program, the retailer is allowed to sell Qwest's Prepaid Card at a price different from (higher than) the tariffed rate if the retailer believes that the card (due to its special design, colors, logo, trademarks, etc.) has a collector's value that exceeds the value of the card for its use as a means of gaining access to and paying for telecommunications service. In selling a Collector Card, the retailer is required to display the tariffed usage value of the card on one side of the card and the collector's value (not tariffed) on the opposite side of the card.

B. The Department's Comments

The Department objected to the Collector Card Program, arguing that Minn. Stat. § 237.74, subd. 1 requires that all rates applied to the Collector Card Program must appear in the tariff. The Department argued that any amount charged in excess of the usage rate was a surcharge and must also appear in the tariff because, the Department asserted, the primary purpose of the card is the provision of long distance service. In the Department's view, the tariff's failure to state a Collector Card rate and require retailers to charge that rate violated Minn. Stat. § 237.74, subd. 1.

The Department also viewed the retailers as operating more as independent telecommunications carriers than as agents for Qwest since they could independently set the level of surcharge. As such, the Department argued, the retailers should be required to obtain a certificate of authority from the Commission before selling Qwest's prepaid cards at collector prices. To rule otherwise, the Department argued, would place competitors operating within the four corners of the law at a competitive disadvantage.

C. The Commission's Analysis and Action

The Commission will approve Qwest's Collector Card Program. The Commission does not view the collector level prices charged by retailers as a surcharge upon a telecommunications service, as characterized by the Department, but as a price the retailer has placed upon an item that is by nature quite distinct from a telecommunications service.

Contrary to the Department's view, the Commission finds that the "collector's value" (and hence price) is effectively disassociated from (essentially unrelated to) the regulated rates for long distance service charged pursuant to a standard prepaid card. When the retailer sells and a consumer purchases one of the Company's Collector Cards, the item in question is a collector's item and, in essence, not a telecommunications product at all. As such, the price charged for such an item need not be tariffed pursuant to Minn. Stat. 237.74, subd. 1.

Moreover, the Commission notes that the point at which a prepaid calling card ceases to be a telecommunications product is readily apparent, not only to the Commission, but also to the consumer. A person wishing to purchase a prepaid calling card for its usage (in order to make telephone calls) would know the tariffed (usage) rate for the card since the tariffed rate is right on the card. If the customer desired the ability to make phone calls, the customer would not purchase

a Collector Card and pay the collector's price but would purchase a more standard-appearing prepaid (usage only) card at the conspicuously lower (tariffed) rate. Because the price of the Collector Card, as well as the tariffed price would appear clearly on a Collector Card, it is unlikely that persons would mistakenly purchase a Collector Card (at Collector-class prices) when they simply wanted the card for usage.

By the same token, it is clear that the customer paying the premium price for a Collector Card would be doing so not to obtain telecommunications service but for the independent reasons that motivate collectors. In purchasing a Collector Card at the collector's price, such a customer would receive a benefit (real or imagined) that is not logically linked to the usage value of the item.

Further, the Commission does not accept the Department's argument that retailers selling the Collector Card are telecommunications carriers who need to obtain certificates of authority before selling Collector's Cards. The Commission finds that retailers will remain agents for the Company whether they sell the Company's prepaid usage value cards at tariffed rates or the Company's Collector Cards at prices established by the retailers. The retailers do not set the price for regulated telecommunications services (the prepaid long distance usage cards) which they must sell at tariffed rates but only for the non-telecommunications items, the Collectors Cards.

II. CAMPUS TALK OPTIONS

A. The Company's Proposal

Campus Talk is a student billing service that Qwest will market to various types of educational institutions, training facilities, and/or housing entities that want to provide a long distance service to their residents and employees. Under the proposed tariff, the educational institutions, training facilities, and/or housing entities would be able to select one of five optional end-user rate schedules (Option 1, Option 2, Option 3, Option 4, and Option X) to offer their students, residents/employees. The tariff stated the usage rates available under each option.

B. The Department's Comments

The Department noted that the rates for Campus Talk Options 1, 2, 3, and 4 are always higher than the rates for Campus Talk Option X. The Department objected that the Campus Talk Options are unreasonably discriminatory in violation of Min. Stat. § 237.74, subd. 2.

Second, the Department stated that the existence of Options 1, 2, 3, and 4 enables Qwest to charge different rates at different locations in the state and, thereby, violate the prohibition on geographic deaveraging in Minn. Stat. § 237.74, subd. 2.

Third, the Department stated that the tariff enables educational institutions, training facilities, and housing entities to effectively operate as independent telephone companies and argued that this was inappropriate since Minn. Stat. § 237.68 (private shared tenant services) already provides an

avenue for such institutions to operate as telephone companies and does so without raising concerns about discriminatory pricing.

Finally, the Department argued that the Company's tariff fails to contain the institutional customers' "effective rates" in violation of Minn. Stat. § 237.74, subd. 1.

III. COMMISSION'S ANALYSIS AND ACTION

Consistent with its analysis and decision to approve GTE Communication Corporation's (GTE-CC's) Variable Prepaid Calling Service (VPCS) in Docket No. P-5139/TC-98-874¹, the Commission will approve Qwest's tariff for Campus Talk Options X, 1,2,3, and 4.

First, the Commission does not accept the Department's assertion that the Campus Talk Options are unreasonably discriminatory in violation of Min. Stat. § 237.74, subd. 2. There will be no price discrimination between the institution's students, employees or residents. Qwest's institutional customer will be providing the option (rate schedule) it selects to all its students, residents, and employees. Second, as between end-users who may pay different rates because their institutions have selected different options (rate schedules), the Commission finds that to the extent that this is discrimination, it is not *unreasonable* discrimination as prohibited by Minn. Stat. § 237.74, subd. 2 because the end-users have at all times the option to use the services of another provider.

Nor does the Commission agree that the tariff's provision for charging different rates at different locations in the state violates the prohibition on geographic deaveraging in Minn. Stat. § 237.74, subd. 2. There is no geographic limitation stated in the tariff. The Company intends to offer the service throughout Minnesota. Moreover, rates do not differ depending on where (the geographic location of) calls originate or terminate. Rates for all routes of the same length are identical, as required by statute.

Third, the Commission does not view the institutions in question as independent telephone companies, as the Department contended. Rather, they are Qwest's contractees (agents). Even if the Department were correct on that point, of course, it would not interfere with approval of Qwest's tariff.

¹ In the Matter of the Introduction of Several Pricing Options by GTE Communications Corporation, Docket No. P-5139/TC-98-874, ORDER APPROVING TARIFF FOR ITS VARIABLE PREPAID CALLING SERVICES (January 29, 1998).

Finally, the Commission finds no violation of Minn. Stat. § 237.74, subd. 1 for failure to contain the institution's "effective rates". There are no "actual rates effectively paid [to Qwest] by the institution" for long distance service, as suggested by the Department. On the basis of this record, Qwest does not sell long distance service to institutions which then resell that service to students. As described in the tariff and responses to information requests, it appears that Qwest provides long distance service directly to the end-users (students, residents, employees) and compensates the institution on a commission basis based on the per minute rate option chosen by the institution. The institutions do not pay a (wholesale) rate to Qwest, as the Department's analysis indicates. Hence, the Commission need not address in this Order the second portion of the Department's argument and consider whether any wholesale rate charged by Qwest must be included in the tariff to comply with Minn. Stat. § 237.74, subd. 1.

ORDER

1. Qwest's tariff for its Collector Card Program is approved.
2. Qwest's tariff for its Campus Talk Options X, 1, 2, 3, and 4 is approved.
3. Qwest's proposed tariff revisions for other services are approved.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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